

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

PARADISE VILLAS (N.P.B.)
CONDOMINIUM ASSOCIATION,
INC.,

CASE NO. 502017CA009022XXXXMB

Plaintiff,

v.

NORTH PALM BEACH PROPERTIES,
INC. and BANKERS LIFE AND
CASUALTY COMPANY,

Defendants.

**DEFENDANT NORTH PALM BEACH PROPERTIES, INC.'S MOTION FOR
SUMMARY JUDGMENT**

COMES NOW Defendant, NORTH PALM BEACH PROPERTIES, INC. ("Defendant North Palm"), by and through undersigned counsel and pursuant to Florida Rule of Civil Procedure 1.510, and hereby moves for summary judgment against Plaintiff, PARADISE VILLAS (N.P.B.) CONDOMINIUM ASSOCIATION, INC. ("Plaintiff Paradise Villas"), and in support thereof, states as follows:

I. No Genuine Dispute Regarding the Following Material Facts

1. Defendant North Palm is the fee simple owner of land upon which Plaintiff constructed its docks and boat slips, hereinafter referred to as the "Submerged Land."
2. Defendant North Palm derails title to the Submerged Land by deed recorded on November 9, 1955, in Official Record Book 1114, Page 281, and Official Record Book 1114, Page 287 of the Public Records of Palm Beach County, Florida.

3. Plaintiff Paradise Villas claims title to the Submerged Land through adverse possession under color of title pursuant to Section 95.16, Florida Statutes (1975).

4. In its Amended Complaint, Plaintiff alleges that Paradise Villas “believes in good faith it owns the Submerged Land” due to the six (6) deeds identified in the Amended Complaint. [Pl.’s Compl. ¶ 6 a–f]. Yet, Plaintiff is fully aware that none of the referenced deeds include any portion of the Submerged Land. Indeed, despite its initial affirmative representations to the Court, and within its Amended Complaint, Plaintiff claims that, after reasonable inquiry, it is unable to ascertain (without any supporting basis or claim thereto) whether any of the referenced deeds include any portion of the Submerged Land.¹

5. Notwithstanding Plaintiff’s claims that it cannot read the legal descriptions in the deeds upon which its own claims are based, in truth, the deeds referenced in the Complaint are clear and unambiguous.

6. None of the deeds relied upon by Plaintiff include or reference any portion of the Submerged Land, as unequivocally testified to by Charles S. Bolz, Esquire, board certified real estate attorney, and Craig L. Wallace, surveyor. [See Affidavit of Charles S. Bolz, Esquire, of Bolz & Bolz, attached hereto as Defendant’s **Exhibit “A,”** and Affidavit of Craig L. Wallace, P.S.M., of Wallace Surveying Corporation, attached hereto as Defendant’s **“Exhibit “B”**]. Moreover, the

¹ When Plaintiff was asked in Request for Admissions to admit that the referenced deeds did not include any part of the Submerged Land, Plaintiff responded as to each and every such request regarding each and every deed: “*Defendant cannot reasonably admit or deny this request for admission, despite reasonable inquiry.*” [See Request for Admissions, DE 56, December 22, 2017, and Response to Request for Admissions DE 68, January 22, 2018]. Of course, this is preposterous. There is nothing complicated or mysterious about the deeds and any competent real estate attorney or surveyor can easily ascertain that none of the referenced deeds reference any portion of the Submerged Land.

Declaration of Condominium of Paradise Villas, dated April 30, 1980 and recorded on May 16, 1980 in Official Records Book 3292, Page 0986 of the Public Records of Palm Beach County, Florida, **does not** include any portion of the Submerged Land. [See Affidavit of Charles S. Bolz, Esquire, of Bolz & Bolz, and Affidavit of Craig L. Wallace, P.S.M., of Wallace Surveying Corporation].

7. There is no genuine dispute regarding this material issue, and Plaintiff's claim of adverse possession under color of title fails as a matter of law.

8. Paradise Villas has never paid taxes on the Submerged Land. Thus, Plaintiff's adverse possession claim further fails as a matter of law for this reason.

9. On November 14, 1956, Defendant North Palm, f/k/a North Palm Beach, Inc., conveyed an Easement Deed to the Central and Southern Florida Flood Control District, for the purpose of constructing, maintaining, and operating property which became known as the C-17 Canal (and which includes the Submerged Land) solely for flood control, reclamation, conservation, water storage, or allied purposes. See Defendant's **Exhibit "C."**

10. Plaintiff Paradise Villas obtained revocable permits from Defendant North Palm's grantee, the predecessor to the South Florida Water Management District ("SFWMD"), for the construction, use, and maintenance of the docks and boat slips on the Submerged Land. The revocable permit by Defendant North Palm's grantee constituted consent, which could be revoked at any time by either Defendant North Palm as the property owner, or the SFWMD as the issuer of the revocable permit.

11. Chapter 40E-6.381(5), Limiting Conditions, of the Florida Administrative Code required Plaintiff Paradise Villas to obtain all private authorizations prior to the start of any

construction or alteration authorized by any permits, and modifications thereto, issued by the SFWMD. Plaintiff Paradise Villas represents that it has “complie[d] with all applicable laws and regulations” with respect to any and all permits, and modifications thereto, obtained from the SFWMD. [Pl.’s Compl. ¶ 26].

12. Furthermore, Plaintiff Paradise Villas represents that Defendant “NORTH PALM consented to ASSOCIATION’s possession of the NORTH PALM property and construction of the boat docks and slips on the NORTH PALM property.” [Pl.’s Aff. Defs. ¶ 28].

13. On September 15, 2017, Defendant North Palm formally notified Plaintiff Paradise Villas that any right or consent, whether implied or express, with regard to Plaintiff’s entry or use of the Submerged Land, was expressly withdrawn, and that Plaintiff’s continued use of the C-17 Canal constituted an illegal trespass and unlawful detainer. *See* Defendant’s Answer, Affirmative Defenses and Counterclaim filed September 18, 2017, and **Exhibit “N”** attached thereto.

14. The C-17 Canal began in 1897 as a ditch (known as “Dimick’s Ditch”), dug by hand² south of the haul-over from Lake Worth Creek, in order to drain the land for farming in preparation for the dredging of the Florida East Coast Canal.

15. The man-made created waterway was later euphemistically called, the “Earman River,” after John Sites Earman, who was voted the first mayor of West Palm Beach when it was incorporated in 1894.

16. No river or waterway existed before this construction project began in 1897. *See, e.g.,* Defendant’s **Exhibit “D-1,”** Gray’s Atlas Map of Florida, 1875, and Defendant’s **Exhibit “D-**

² Joseph Borman, before he became Palm Beach’s first town marshal, helped dig Dimick’s Ditch by hand, along with Nathan Pitts (Pitts Island), Elisha N. Dimick, and George Lainhart.

2,” Copy of Original Township 42 South, Range Forty-Three East Survey, November 7, 1859 which reflects details of rivers, lakes and other water bodies. The “Earman River” is not reflected in neither the map nor survey. *See also* Defendant’s **Exhibit “E,”** Aerial Photo of the “Earman River,” 1953.

17. In 1956, Defendant North Palm conveyed easements to the Central and Southern Florida Flood Control District, by Easement Deeds recorded in Deed Book 1163, Page 186, and Deed Book 1163, Page 294, for “construction, maintenance and operating of any project in the interest of flood control, reclamation, conservation, water storage and allied purposes,” referencing Canal C-17 (Earman River Canal).

18. The C-17 Canal, a.k.a. the Earman River or Earman River Canal, is a man-made waterway, the title of which remains in the name of Defendant North Palm (except for those parcels conveyed to third parties by Defendant North Palm).

II. Standard of Review

Florida Rule of Civil Procedure 1.510 requires summary judgment where the pleadings, affidavits, answers to interrogatories, depositions, and other materials “on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fla. R. Civ. P. 1.510(c). The purpose of the summary judgment rule is “to save valuable trial time and thus to assist in securing speedy and inexpensive justice.” *Cook v. Navy Point, Inc.*, 88 So. 2d 532, 534 (Fla. 1956).

The movant bears the initial burden of demonstrating the nonexistence of any genuine issue of material fact. *Landers v. Milton*, 370 So. 2d 368, 370 (Fla. 1979). Once the movant sufficiently demonstrates the nonexistence of any genuine issues, “it is incumbent upon the non-movant to

come forward in good faith and show that such does exist.” *Fla. Palm-Aire Corp. v. Delvin*, 230 So. 2d 26, 28 (Fla. 4th DCA 1969) (“A genuine issue is not a fanciful or mystical one, but is that which may be reasonably inferred from the case as a whole.”). The non-movant cannot avoid summary judgment by merely asserting a fact without any evidence to support it. *Nat’l Airlines v. Fla. Equip. Co. of Miami*, 71 So. 2d 741, 744 (Fla. 1954). As fully discussed below, there are no genuine issues of material fact in dispute in this case, therefore summary judgment in favor of Defendant North Palm must be entered on Plaintiff Paradise Villas’ Amended Complaint for adverse possession under color of title, prescriptive easement, express easement, implied easement, and easement by necessity.

III. Argument

A. Adverse Possession

Florida courts apply the applicable adverse possession under color of title statute in effect at the time a party’s purported interest in the disputed property accrued. *Sapp v. Anderson*, 673 So. 2d 569, 570 (Fla. 4th DCA 1996). In this case, just as in *Sapp*, Plaintiff Paradise Villas’ claim of adverse possession under color of title is alleged to have accrued prior to the 1987 amendment of the adverse possession under color of title statute. Therefore, Plaintiff must meet the requirements of Section 95.16, Florida Statutes (1975) in effect from January 1, 1975 to January 1, 1988. The only significant change between the 1975 version of the statute and the current statute is found in section 2(b) pertaining to enclosures. Enclosures are not at issue in the case at hand, and, therefore, either version of the statute is appropriate for our purposes.

Establishing title by adverse possession under color of title involves a two-step process. *McLemore v. McLemore*, 675 So. 2d 202, 206 (Fla. 1st DCA 1996). First, **the claim must be**

founded “on a written instrument as being a conveyance of the property” Fla. Stat. § 95.16 (1975) (emphasis added). The written instrument must contain a **legally sufficient description of the property**, be “recorded in the office of the clerk of the circuit court of the county where the property is located,” and the property must be possessed continuously for seven (7) years. *Id.*; see also *Bonifay v. Garner*, 445 So. 2d 597, 601-02 (Fla. 1st DCA 1984) (“One who claims under color of title must base the claim on a written instrument which purports to convey the property.”). Second, the requirements of Section 95.16(2), Florida Statutes must be met. The claimant must show by clear and positive proof that the property has been usually cultivated or improved, or protected by a substantial enclosure. *Mullins v. Colbert*, 898 So. 2d 1149, 1151 (Fla. 5th DCA 2005).

Moreover, “[t]he doctrine of color of title is available only in cases where the instrument purporting to be a conveyance is accepted in good faith and in the honest belief³ that it vests the title in the claimant.” *Simpson v. Lindgren*, 133 So. 2d 439, 441 (Fla. 3d DCA 1961). A party opposing the claim is not required to show the claimant’s bad faith – rather, “Florida law requires the claimant to show that the instrument was accepted in good faith by the grantee through whom the party seeking adverse possession claims.” *Bonifay v. Garner*, 503 So. 2d 389, 394 (Fla. 1st DCA 1989). Adverse possession is not favored and all doubts are resolved in favor of the fee simple owner. *Downing v. Bird*, 100 So. 2d 57 (Fla. 1958).

³ Plaintiff does not and cannot have a “good faith” and “honest” belief that it holds fee simple title to the Submerged Land by virtue of the fact that it was obligated to obtain a revocable permit from the SFWMD to construct the docks and boat slips. The SFWMD is not the fee simple owner of the Submerged Land, either. Fee simple title to the Submerged Land is vested in Defendant North Palm.

1. Plaintiff's Claim for Adverse Possession Fails

In its Amended Complaint, Plaintiff Paradise Villas alleges it has a “good faith belief” that it owns the following described real property, hereinafter referred to as the “Submerged Land”

that portion of the C-17 located in Section 16, Township 42 South, Range 43 East, said portion of the Canal being Easterly of State Road 5 (which is also Easterly of Government Lot 4), being 40 feet South of and adjacent to Paradise Villas Condominium, a Condominium, recorded in Official Records Book 3232, Page 986, of the Public Records of Palm Beach County, Florida.

[Pl.'s Am. Compl. ¶ 5].

Plaintiff's claim for adverse possession under color of title fails, as a matter of law, because Plaintiff does not and has never, as a matter of law, possessed the disputed property under color of title. No part of the property described in this legal description of the Submerged Land is included whatsoever in any of the six (6) deeds that Plaintiff rests upon as support for its adverse possession under color of title claim. [See Affidavit of Craig L. Wallace, P.S.M., of Wallace Surveying Corporation, and Affidavit of Charles S. Bolz, Esquire, of Bolz & Bolz.]. “Without a description of the disputed land in the deed, the claim of adverse possession under color of title must also fail.” *Bonifay*, 445 So. 2d at 602.

Plaintiff attempts to rely upon the Declaration of Condominium's reference to the docks and boat slips to support its “good faith belief that it owns the Submerged Land,” but this argument must also fail as a matter of law. [Pl.'s Am. Compl. ¶¶ 7–8, 11–12, 14–15]. First and foremost, the Declaration of Condominium specifically provides the legal description for all property owned by Plaintiff, and no part of the Submerged Land is included in that property description. [See Affidavit of Craig L. Wallace, P.S.M., of Wallace Surveying Corporation, and Affidavit of Charles S. Bolz,

Esquire, of Bolz & Bolz.]. In other words, according to the Plaintiff's very own Declaration of Condominium, Plaintiff does not own the Submerged Land.⁴

Furthermore, as noted above, the first requirement for a claim under color of title pursuant to Section 95.16, Florida Statutes, is that the claim be founded "on a written instrument as being a conveyance of the property or on a decree or judgment." Fla. Stat. § 95.16 (1975). The Declaration of Condominium is a recorded instrument, but it is not an instrument of conveyance, nor is it a decree or a judgment.⁵

Even if the Declaration of Condominium were a written instrument of conveyance, it must contain a legally sufficient description of the property to be "recorded in the office of the clerk of the circuit court of the county where the property is located." *See Seton v. Swann*, 650 So. 2d 35 (Fla. 1995) (holding that defendants did not establish adverse possession by color of title because, under § 95.16, title to property possessed but not described in a recorded instrument cannot be used to show color of title); *see also Sanders v. Thomas*, 821 So. 2d 1214, 1216 (Fla. 1st DCA

⁴ That the Declaration of Condominium purportedly describes the docks and boat slips constructed upon Defendant's Submerged Land as "common elements" is of no significance. Condominium property, as defined by 718.103(13), Florida Statutes, means the lands, leaseholds, and personal property subjected to condominium ownership. *Country Manors Ass'n, Inc. v. Master Antenna Sys., Inc.*, 458 So.2d 835, 837 (Fla. 4th DCA 1984). The Submerged Land has never been subjected to condominium ownership.

⁵ In support of its *Lis Pendens*, Plaintiff Paradise Villas noted that the Declaration in *100 Lincoln Rd SB, LLC v. Daxan 26 (FL), LLC*, 180 So. 3d 134, 137 (Fla. 3d DCA 2015) was a "recorded instrument" within the meaning of Section 48.23(1), Florida Statutes (2014). The court explained its reasoning as follows: "Daxan's claims are based on the recorded Declaration and its terms, and the commercial units in contention are part of the legal description in the recorded instrument." (emphasis added). Importantly, *Daxan* did not involve a claim of adverse possession. Indeed, **no court has held that a recorded Declaration is "an instrument of conveyance" within the meaning of Section 95.16, Florida Statutes. This is particularly true where, as here, the legal description of the condominium property does not include the property in dispute.**

2002) (“Appellee does not have a written instrument containing a legally sufficient description of the property to establish a claim for adverse possession under color of title.”). Plaintiff Paradise Villas’ Declaration of Condominium does not contain a legal description of the Submerged Land. Because the Declaration of Condominium does not contain a “description of the disputed land” and it is not “an instrument purporting to be a conveyance,” it cannot serve as “record title” for Plaintiff Paradise Villas’ adverse possession claim. *See Seton*, 650 So. 2d 35.

Indeed, Plaintiff has not referenced nor attached a single recorded instrument which purports to grant or convey to Plaintiff title to the Submerged Land. This is an essential element of Plaintiff’s claim. Accordingly, Plaintiff’s claim for adverse possession under color of title fails as a matter of law. *Bonifay*, 445 So. 2d at 602; *Simpson*, 133 So. 2d at 441.

B. Declaratory Judgment

A party seeking declaratory relief must show that there is a bona fide, actual, present need for such declaration based on ascertainable facts. *Coal. for Adequacy & Farmers in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400 (Fla. 1996). The granting of declaratory judgment remains within the sound discretion of the trial court and is not a matter of right of a litigant. *Jacksonville Roofing & Sheet Metal Contractors Ass’n v. Local Union No. 435, Sheet Metal Workers’ Intern. Ass’n of Jacksonville*, 156 So. 2d 416, 418 (Fla. 1st DCA 1963); *see also Bowden v. Seaboard Air Line R. Co.*, 47 So. 2d 786, 787 (Fla. 1950) (holding that to invoke declaratory relief jurisdiction, “it is essential that the movant allege facts which show that he is in doubt concerning *his* rights under *said* instrument”). The current record before the Court in this case reflects that there is no bona fide practical need for a declaration because Plaintiff has not raised a bona fide dispute based on ascertainable facts. Thus, Plaintiff’s right to declaratory relief simply does not exist.

C. Prescriptive Easement

1. Disfavored

The Florida Supreme Court has long held that granting rights in the lands of another is disfavored under the law, and all doubts against the creation of the right must be resolved in favor of the owner of the land without the aid of conjecture. *See Downing*, 100 So. 2d 57; *see also Orange Blossom Hills, Inc. v. Kearsley*, 299 So. 2d 75, 77 (Fla. 1st DCA 1974) (“Acquisition of rights by one in the lands of another, based on possession or use, is not favored in the law and the acquisition of such rights will be restricted.”). Because prescriptive rights are gained by an adverse user asserting a right based on his own wrongdoing, the law frowns upon the acquisition of prescriptive rights and requires a high burden as to allegations and proof in order to overcome historical and well-founded presumptions against wrongdoing. *Crigger v. Fla. Power Corp.*, 436 So. 2d 937, 943 (Fla. 5th DCA 1983). The burden of proof is on the party seeking to impress the easement, and the adverse use must be proven by clear and positive proof as to all essential elements. *See Downing*, 100 So. 2d at 66; *Guerard v. Roper*, 385 So. 2d 718, 720 (Fla. 5th DCA 1980).

2. Elements of Prescriptive Easement

Under Florida law, a party can acquire a prescriptive easement by using the property continuously and without interruption; using the property in a manner adverse to the owner or under a claim of right; and using a specific parcel for at minimum twenty (20) years. *See J. C. Vereen & Sons v. Houser*, 167 So. 45 (Fla. 1936). A claimant must prove by clear and convincing evidence that: (i) it has made continuous, actual, and uninterrupted use of the easement for twenty (20) years; (ii) the use was related to a certain, limited, and defined area of land; (iii) the use has

been with the knowledge of the owner or so open, notorious, or visible as to impute knowledge to the owner; and (iv) the use has been hostile or adverse to the claims of the owner,

that is, (a) the use has been made without the permission of the owner and under some claim of right other than permission from owner, (b) the use has been either exclusive of owner or inconsistent with the rights of the owner of the land to its use and enjoyment, and (c) the use has been such that, during the whole prescribed period, the owner had a cause of action against the user for use being made.

Dan v. BSJ Realty, LLC, 953 So. 2d 640, 642 (Fla. 3d DCA 2007).

Because an easement by prescription is created only by an adverse use of the privilege with the knowledge of the person against whom it is claimed, if the use is not exclusive and not inconsistent with the rights of the owner of the land, the presumption is that such use of the land is permissive, rather than adverse. *J. C. Vereen & Sons*, 167 So. at 47. Plaintiff Paradise Villas is not entitled to a prescriptive easement that is so broad as to totally exclude any use by the true owner. *Weis v. Hovnanian Fla., Inc.*, 436 So. 2d 258, 260 (Fla. 4th DCA 1983). “Such rights are tantamount to title which can only be acquired through adverse possession.” *Id.*

3. Prescriptive Easement vs. Adverse Possession

Under the common law, prescriptive easement and adverse possession were similar – the primary differences being the rights acquired from a successful claim (corporeal vs. incorporeal rights) and the type of activity which would qualify under the claim (possession vs. use). *See generally Downing*, 100 So. 2d at 64–65.⁶ At the most basic level, easements are nonpossessory

⁶ An easement is an incorporeal hereditament—a servitude imposed upon corporeal property—it does not and cannot operate to dispossess the owner of the fee. *Fla. Power Corp.*, 125 So. 2d at 315–16; *see also Downing*, 100 So. 2d 57 (explaining that title acquired by adverse possession is a corporeal right, whereas a prescriptive right is an incorporeal right). “**Not being a possessory interest or an interest which may become possessory**, it is not an estate.” *Fla. Power Corp.*, 125 So. 2d at 315 (emphasis added).

interests in land which entitle the easement holder the right to use the land of another for a specific, limited purpose that is not inconsistent with the general use of the property by the true owner. 25 Am. Jur. 2d Easements and Licenses § 1. Conversely, if one possesses another's land and seeks the right to continue to possess that land, they must establish all elements of adverse possession under Section 95.16, Florida Statutes (adverse possession under color of title) or Section 95.18, Florida Statutes (adverse possession without color of title). A common law right of adverse possession does not exist.

Plaintiff's prescriptive easement claim is actually one for adverse possession. Plaintiff claims it has continuously "used" the Submerged Land for over twenty (20) years through the installation and maintenance of its docks and boat slips. This is not the type of "use" contemplated under the law. The installation and maintenance of docks and boat slips used exclusively by a certain limited number of owners in Paradise Villas is "possession," not "use," and is therefore inconsistent with a claim for prescriptive easement. Plaintiff's prescriptive easement claim is a claim for adverse possession in sheep's clothing. Indeed, Plaintiff is seeking the right to continue "possessing" the Submerged Land.

Plaintiff knows it cannot satisfy the requirements for adverse possession under color of title or without color of title; thus, Plaintiff seeks to circumvent these statutory requirements by claiming a "prescriptive easement." This claim fails as a matter of law because Plaintiff is in actual exclusive possession of Defendant's property. "'Continuous,' under the terms of the definition, does not mean 'possession.' **He who has an easement in particular land is not and cannot be thereby in possession of the land; he can only use it.**" *Fla. Power Corp.*, 125 So. 2d at 315 (citation omitted).

Plaintiff's claim is similar to that discussed in *Platt v. Pietras*, 382 So. 2d 414, 417 (Fla. 5th DCA 1980), wherein the court stated, "while appellant calls his claim a prescriptive easement, in reality he claims adverse possession, but concededly has not perfected adverse possession because he has never returned appellees' property for taxes nor paid the taxes thereon." This is precisely the case here. "An allegation of exclusive possession is wholly inconsistent with the theory of establishing an easement [A]n action to establish an easement does not involve possession or occupation of the land It does not involve dominion over the premises except that which is necessary for the enjoyment of the use." *Platt*, 382 So. 2d at 416–17 (citation omitted).

4. Complete Exclusive Use Defeats Easement Rights

As a matter of law, Plaintiff Paradise Villas cannot prove all requisite elements to establish a prescriptive easement. Plaintiff alleges complete exclusive possession of the Submerged Land. [Pl.'s Am. Compl. ¶¶ 8, 14]. Plaintiff states:

The ASSOCIATION entered possession of the Submerged Land and/or the submerged lands under the docks and boat slips on the date the Declaration of Condominium attached hereto as **Exhibit "A"**, was recorded, and has **continuously maintained possession** of the Submerged Land, and the submerged lands under the docks and boat slips under a Color of Title **exclusive of any other right**

(emphasis added). As the Fourth District Court of Appeal made clear, an easement is improper where it amounts to complete exclusive use of the property. *Weis*, 436 So. 2d at 260 (citing *Platt*, 382 So. 2d 414). Plaintiff's prescriptive easement claim operates to completely exclude Defendant North Palm from any use of its land. Because Plaintiff cannot prove by clear and positive proof all essential elements of prescriptive easement, this claim fails as a matter of law. See *Downing*, 100 So. 2d at 66; *Guerard v. Roper*, 385 So. 2d at 720.

5. Permissive Use Defeats Easement Prescriptive Easement

Further, Plaintiff cannot establish such use was adverse to the owner and without the owner's permission. *BSJ Realty, LLC*, 953 So. 2d at 642.

The Florida Supreme Court in *Downing v. Bird*, 100 So. 2d 57 (Fla. 1958) stated that

in either prescription or adverse possession, the use or possession is presumed to be in subordination to the title of the true owner, and with his permission and the burden is on the claimant to prove that the use or possession is adverse. This essential element as well as all others must be proved by clear and positive proof, and cannot be established by loose, uncertain testimony which necessitates resort to mere conjecture.

Directly contrary to the Florida Supreme Court's ruling in *Downing*, Plaintiff Paradise Villas affirmatively maintains that "NORTH PALM consented to ASSOCIATION's possession of the NORTH PALM property and construction of the boat docks and slips on the NORTH PALM property," and that "NORTH PALM and/or NORTH PALM's predecessors in title acquiesced to [the] installation of the docks and boat slips." [Pl.'s Aff. Def.'s ¶¶ 28, 25]. Because the theory of prescriptive easement is based on adverse use, no such easement can be acquired if the owner of the servient estate shows that such use was permissive. As the Florida Supreme Court put it cogently: "One who secures from the owner of property authority or permission to use a passageway over such property . . . cannot successfully claim such to be a way or easement by prescription." *Burdine v. Sewell*, 109 So. 648, 652 (1926). The granting of legal permission by the rightful owner interrupts or destroys prescriptive rights.

In the instant case, Plaintiff alleges its use of the Submerged Land was permissive. No prescriptive rights can accrue from permissive use. *Fla. Power Corp.*, 436 So. 2d at 949. Plaintiff obtained a revocable permit from the SFWMD for the construction, use, and maintenance of the docks and boat slips on the Submerged Land. [Pl.'s Compl. ¶ 14, 26]. In consideration for receipt

of that revocable permit, Limiting Condition 40E-6.381(5) of the Florida Administrative Code required Plaintiff to obtain, *inter alia*, all “private authorizations prior to the start of any construction or alteration authorized by the permit.” Plaintiff contends that, with regard to any permits obtained from the SFWMD, it has “compleie[d] with all applicable laws and regulations.” [Pl.’s Compl. ¶ 26]. Accordingly, by Plaintiff’s own statements, and as a matter of law, Plaintiff cannot establish that its use of the Submerged Land, and its construction of the docks and boat slips thereon, was adverse or hostile to the true owner, Defendant North Palm. Thus, Plaintiff’s claim for prescriptive easement fails as a matter of law.

D. Riparian Rights

Prior to 1845, Florida was a territory of the United States, and all then existing navigable waterways were the property of the sovereign United States. In 1845, Florida became the 27th state, at which time all internal navigable waterways became the property of the State of Florida. All external waterways continued to be owned by the United States. Navigable inland waters of the state, and the soil beneath them, are the property of the state and held for the use and enjoyment by all the people of the state. *State v. Black River Phosphate*, 13 So. 640 (Fla. 1893).

“Riparian rights are those incident to land bordering upon navigable waters. They are rights of ingress, egress, boating, bathing, and fishing and such others as may be or have been defined by law. Such rights are not of a proprietary nature.” Fla. Stat. § 253.141(1).

[W]hether or not a particular area is that of a navigable body of water and thus sovereignty property held in trust is a question of fact and dependent upon whether or not the body of water is permanent in character and, **in its ordinary and natural state**, is navigable for useful purposes and is of sufficient size and so situated and conditioned that it may be used for purposes common to the public in the locality where it is located.

Odom v. Deltona Corp., 341 So. 2d 977, 981 (Fla. 1976) (emphasis added).

Similar to the federal title test, Florida's test for navigability does not allow for the consideration of artificial improvements; instead, navigability is based on the water body's potential for commercial use in its ordinary and natural condition. *Odom*, 341 So. 2d at 988; *Bucki v. Cone*, 6 So. 160 (Fla. 1889). Importantly, the factual determination of navigability must be based on the condition of the waterbody in its natural state, without artificial improvement. *Clément v. Watson*, 58 So. 25 (1912). "Bodies of water which become navigable by artificial means are not converted from private ownership into sovereignty lands." *Odom*, 341 So. 2d at 981.

The "Earman River," also known as the C-17 Canal, did not exist in 1845, when all internal navigable waterways became the property of the State of Florida. The land used to construct "Dimick's Ditch," later expanded into the Earman River, was dry land privately owned by John A. Andrews, Stephen B. Bell, and Mary H. Halter, predecessors in title to Defendant North Palm. See Defendant's **Exhibit "F-1,"** Deed No. 707, Defendant's **Exhibit "F-2,"** Deed No. 2000; and **Exhibits "D-1" and "D-2."** The Florida Supreme Court has made clear that navigability must be determined at the time statehood was acquired in 1845.

As the sovereignty title arose contemporaneously with the status of statehood, the sovereignty lands are the beds and shores of waters then 'navigable in fact'. Waters not then, in their natural state, navigable in fact afforded no basis for its area being sovereign trust lands. Consequently, in any event the true test is natural navigability or capable navigability at the time statehood was acquired in 1845.

Odom, 341 So. 2d at 981

.Because the C-17 Canal is not a navigable waterway, no riparian rights can be granted to the adjacent land owners. Thus, Plaintiff's claim for riparian rights fails as a matter of law.

E. “Explicit” or Express Easement

An easement is an interest in land that gives to one, other than the owner, a right to use the land for a specific purpose. *Am. Quick Sign, Inc. v. Reinhardt*, 899 So. 2d 461, 464 (Fla. 5th DCA 2005). An “easement” is not an estate in land and it does not convey title. *Branscombe v. Jupiter Harbour, LLC*, 76 So. 3d 942, 947 (Fla. 4th DCA 2011) (quoting *Am. Quick Sign, Inc.*, 899 So. 2d at 464). Easements may be created in only three ways: by express grant; implication; or prescription. *Fla. Power Corp.*, 436 So. 2d at 941.

An easement created by grant must be evidenced by the provisions in a deed or inferred by the construction placed upon the terms and conditions appearing in a deed, or other written instrument. *Winthrop v. Wadsworth*, 42 So. 2d 541, 543 (Fla. 1949); *see also Am. Quick Sign, Inc.*, 899 So. 2d at 464–65. While “no magical words” are necessary to create an express easement, the words granting the easement must show “the intention of the parties to create an easement on a sufficiently identifiable estate.” *Hagelin v. U.S. Funding Grp., LLC*, 198 So.3d 53, 57 (Fla. 2d DCA 2015). Documents purporting to convey easements are subject to the same rules of construction as contracts and should be interpreted using contract principles. *One Harbor Fin. Ltd. v. Hynes Props., LLC*, 884 So.2d 1039 (Fla. 5th DCA 2004).

Notwithstanding that an easement by express grant is not supported by the pleadings in this case nor the evidence, Plaintiff’s claim for an express easement fails as a matter of law. No deed of conveyance or other similar written instrument was ever executed by Defendant, the owner of the Submerged Land, to Plaintiff. One who does not own the land upon which the easement rests cannot grant to anyone, including him or herself, an express easement to use that land.

F. Implied Easement and Easement by Necessity

An implied easement may be created from an implied reservation in a deed, from a conveyance with reference to a plat or map showing streets or ways, or as a way of necessity. Plaintiff has not identified, much less pled any reference to a deed, plat, or map from which an implied easement may be created.

An implied easement by necessity is established when land is conveyed “to which there is not accessible right-of-way except over [the] land.” *PGA N. II of Fla., LLC v. Div. of Admin., State of Fla. Dept. of Transp.*, 126 So. 3d 1150, 1153 (Fla. 4th DCA 2012) (quoting *Matthews v. Quarles*, 504 So. 2d 1246, 1247 (Fla. 1st DCA 1986)). In order for an implied easement by necessity to be granted, the following elements must be present:

(1) both properties must at one time have been owned by the same party, (2) the common source of title must have created the situation causing the dominant tenement to become landlocked, and (3) at the time the common source of title created the problem the servient tenement must have had access to a public road.

Id. at 1154 (quoting *Matthews*, 504 So. 2d at 1247); *see also* Fla. Stat. § 704.01(1).

Notwithstanding that Plaintiff has not pled any of the elements of common law implied easement nor easement by necessity, neither are supported by the applicable law in this case, nor the evidence. For instance, the Plaintiffs land is clearly not “landlocked.” Accordingly, Plaintiff’s blanket claim for an implied easement and easement by necessity must fail as a matter of law. Plaintiff cannot satisfy any of the elements required to establish an implied easement in the present case.

WHEREFORE, Defendant, NORTH PALM BEACH PROPERTIES, INC., respectfully requests that this Honorable Court grant its Motion for Summary Judgment against Plaintiff, PARADISE VILLAS (N.P.B.) CONDOMINIUM ASSOCIATION, INC., enter judgment in its

favor, and order (1) Plaintiff to vacate Defendant's property forthwith; (2) Plaintiff to remove its docks and boat slips from Defendant's property; (3) Plaintiff pay for all costs of restoration to the Submerged Land; and (4) award Defendant fees and costs of this action, and grant such other relief this Court deems just, equitable, and proper.

Dated this 9th day of April, 2018.

Respectfully submitted,

**WARD, DAMON, POSNER,
PHETERSON & BLEAU**
4420 Beacon Circle
West Palm Beach, FL 33407
Tel.: (561) 842-3000
Fax: (561) 842-3626
Email: litservice@warddamon.com
Secondary: dbleau@warddamon.com
msaunders@warddamon.com

/s/ Denise J. Bleau

By: _____

Denise J. Bleau, Esq.
Florida Bar No. 599514
Ana P. Moretto, Esq.
Florida Bar No. 126347

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 9, 2018, the foregoing was electronically filed with the Clerk of the Court by using the Florida Courts E-Portal System, that provides a true and correct copy of the foregoing to: John R. Sheppard, Esq., Cohen, Norris, Wolmer, Ray, Telepman & Cohen, Counsel for Plaintiffs, 712 US Highway 1, Suite 400, North Palm Beach, FL 33408-7146, jrs@fcohenlaw.com and tlc@fcohenlaw.com.

/s/ Denise J. Bleau

By: _____

Denise J. Bleau, Esq.
Florida Bar No. 599514
Ana P. Moretto, Esq.
Florida Bar No. 126347

EXHIBIT “A”

NOT A CERTIFIED COPY

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

PARADISE VILLAS (N.P.B.)
CONDOMINIUM ASSOCIATION,
INC.,

CASE NO.:502017CA009022XXXXMB

Plaintiff,

v.

NORTH PALM BEACH PROPERTIES,
INC., and BANKERS LIFE AND
CASUALTY COMPANY,

Defendants.

AFFIDAVIT OF CHARLES S. BOLZ, ESQUIRE

Before me, the undersigned authority, on this day personally appeared Charles S. Bolz, Esq. ("Affiant") who, being first duly sworn, upon his oath states:

1. My legal name is Charles S. Bolz. I am over 21 years old and am otherwise competent to testify to the matters and facts contained in this Affidavit which is of my own personal knowledge, except where stated to be on information and belief, and where so stated I believe them to be true.
2. I am a shareholder in Bolz & Bolz, Attorneys at Law and President of Horizon Title Services, Inc., a full service title insurance agency.
3. I received a Bachelor of Arts in Political Science and History from the University of Rochester and my Juris Doctorate from the Emory University School of Law
4. I am a member in good standing with the Florida Bar and have been admitted to practice law in the State of Florida since May 29, 1987. My bar number is 654116.
5. I have been certified by the Florida Bar Board of Legal Specialization as a Board Certified Real Estate Attorney since 1992.
6. My practice focuses on residential and commercial real estate, including closing and title insurance, lending, bank representation, and leasing matters. I also practice business and corporate law, estate planning, and probate law.
7. I am a founding member and Vice President of the Attorneys' Real Estate Council of Palm Beach County, Inc. In addition to the Florida Bar, I am also a member of

the State Bar of Georgia and the United States Virgin Islands Bar.

8. I was asked by Defendant's counsel in the above-referenced action (hereinafter the "Instant Action") to offer my professional opinions to determine whether any of the written instruments referenced by or relied upon by the Plaintiff include the property that is the subject matter of the Instant Action and is described as follows:

That portion of the C-17 located in Section 16, Township 42 South, Range 43 East, said portion of the Canal being Easterly of State Road 5 (which is also Easterly of Government Lot 4), being 40 feet South of and adjacent to Paradise Villas Condominium, a Condominium, recorded in Official Records Book 3232, Page 986, of the Public Records of Palm Beach County, Florida.

PCN: 68-43-42-16-00-004-0020 (hereinafter referred to as the "Submerged Land").

9. Plaintiff has constructed docks and boat slips upon this Submerged Land.

10. In my capacity as an expert witness for North Palm Beach Properties, Inc., I reviewed and analyzed the pleadings, deeds, other written instruments, and the Affidavit of Craig L. Wallace, P.S.M., in the above-referenced action.

11. The Warranty Deed dated February 7, 1996 and recorded in Official Records Book 1335, Page 355 of the Public Records in Palm Beach County, Florida does not include any portion of the Submerged Land.

12. The Warranty Deed dated March 20, 1968 and recorded in Official Records Book 1644, Page 1699 of the Public Records of Palm Beach County, Florida does not include any portion of the Submerged Land.

13. The Quit Claim Deed dated November 7, 1969 and recorded November 18, 1969 at Official Records Book 1765, Page 749 of the Public Records of Palm Beach County, Florida does not include any portion of the Submerged Land.

14. The Warranty Deed dated January 8, 1980 and recorded on May 8, 1980 at Official Records Book 3208, Page 1662 of the Public Records of Palm Beach County, Florida does not include any portion of the Submerged Land.

15. The Quit Claim Deed dated January 8, 1980 and recorded on January 8, 1980 at Official Records Book 3208, Page 1657 of the Public Records of Palm Beach County, Florida does not include any portion of the Submerged Land.

16. The Declaration of Condominium of Paradise Villas, dated April 30, 1980 and recorded on May 16, 1980 at Official Records Book 3292, Page 0986 of the Public Records of Palm Beach County, Florida does not include any portion of the Submerged Land.

17. It is my professional opinion and belief that none of the recorded written instruments referenced by or relied upon by the Plaintiff in Plaintiff's Complaint include or describe the Submerged Land.

I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this Affidavit and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

Further Affiant Sayeth Naught.

Charles S. Bolz/Esquire

STATE OF FLORIDA)
) ss:
COUNTY OF PALM BEACH)

SWORN TO, ACKNOWLEDGED AND SUBSCRIBED before me by Charles S. Bolz,
who is personally known to me, or has presented
FLORIDA DRIVER LICENSE as identification, on this 15th day of March,
2018.

Notary Public, State of Florida

My Commission Expires: 6/21/2019

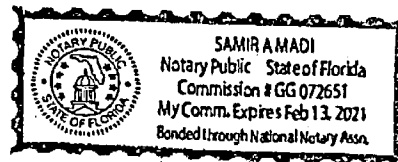


EXHIBIT “B”

NOT A CERTIFIED COPY

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

PARADISE VILLAS (N.P.B.)
CONDOMINIUM ASSOCIATION,
INC.,

CASE NO.:502017CA009022XXXXMB

Plaintiff,

v.

NORTH PALM BEACH PROPERTIES,
INC., and BANKERS LIFE AND
CASUALTY COMPANY,

Defendants.

AFFIDAVIT OF CRAIG L. WALLACE, P.S.M.

Before me, the undersigned authority, on this day personally appeared Craig L. Wallace, P.S.M. ("Affiant") who, being first duly sworn, upon his oath states:

1. My legal name is Craig L. Wallace. I am over 21 years old and am otherwise competent to testify to the matters and facts contained in this Affidavit which is of my own personal knowledge, except where stated to be on information and belief, and where so stated I believe them to be true.

2. I founded Wallace Surveying Corporation in 1986. I am a Florida Licensed Surveyor and my license number is 3357. I am a fourth generation land surveyor and I have worked in the land surveying business for more than forty (40) years. I have worked on over forty thousand (40,000) survey projects in South Florida.

3. Before founding Wallace Surveying Corporation, I worked for my grandfather's company, William G. Wallace, Inc. I also worked as field personnel for six (6) years. I obtained my Associate of Science Degree in Survey Technology from Palm Beach Junior College, and headed all surveying operations for another ten (10) years.

4. I have served as an officer in both professional and civic organizations including past president, vice president, and secretary of the Palm Beach Chapter of the Florida Surveying and Mapping Society. I have also served as president of Business Inc. of the Palm Beaches, and am a former ambassador of the Northern Palm Beaches Chamber of Commerce.

5. I am a current member of the American Congress on Surveying and Mapping, the Gold Coast Land Surveyors Council, and a former member of the Palm Beach County Citizens

Zoning Code Task Force.

6. Wallace Surveying Corporation is experienced in producing surveys for permitting for local municipalities, as well as for the Department of Environmental Protection, Southwest Florida Water Management District, Seacoast Utility Authority, and Army Corps of Engineers.

7. Wallace Surveying Corporation is experienced in producing boundary surveys. A boundary survey is a survey of a parcel or tract of land, described by a legal description that documents the perimeters of the property by establishing or re-establishing the corners, monuments, boundary lines, any structures as they relate to the boundaries, and all improvements that have been made to the property.

8. Wallace Surveying Corporation also offers expert witness testimony for boundary disputes.

9. I was asked by Defendant's counsel in the above-referenced action (hereinafter the "Instant Action") to offer my professional opinions to determine whether any of the written instruments referenced by or relied upon by the Plaintiff include the property that is the subject matter of the Instant Action and is described as follows:

That portion of the C-17 located in Section 16, Township 42 South, Range 43 East, said portion of the Canal being Easterly of State Road 5 (which is also Easterly of Government Lot 4), being 40 feet South of and adjacent to Paradise Villas Condominium, a Condominium, recorded in Official Records Book 3232, Page 986, of the Public Records of Palm Beach County, Florida.

PCN: 68-43-42-16-00-004-0020 (hereinafter referred to as the "Submerged Land").

10. Based on Palm Beach County Property Appraiser's web site, docks and boat slips have been constructed within the Submerged Land.

11. In my capacity as an expert witness for Defendant North Palm Beach Properties, Inc., I reviewed and analyzed the pleadings, deeds, and other written instruments in the Instant Action.

12. The Warranty Deed dated February 7, 1996 and recorded in Official Records Book 1335, Page 355 of the Public Records in Palm Beach County, Florida does not include any portion of the Submerged Land.

13. The Warranty Deed dated March 20, 1968 and recorded in Official Records Book 1644, Page 1699 of the Public Records of Palm Beach County, Florida does not include any portion of the Submerged Land.

14. The Quit Claim Deed dated November 7, 1969 and recorded November 18, 1969 at Official Records Book 1765, Page 749 of the Public Records of Palm Beach County, Florida does

not include any portion of the Submerged Land.

15. The Warranty Deed dated January 8, 1980 and recorded on May 8, 1980 at Official Records Book 3208, Page 1662 of the Public Records of Palm Beach County, Florida does not include any portion of the Submerged Land.

16. The Quit Claim Deed dated January 8, 1980 and recorded on January 8, 1980 at Official Records Book 3208, Page 1657 of the Public Records of Palm Beach County, Florida does not include any portion of the Submerged Land.

17. The Declaration of Condominium of Paradise Villas, dated April 30, 1980 and recorded on May 16, 1980 at Official Records Book 3292, Page 0986 of the Public Records of Palm Beach County, Florida does not include any portion of the Submerged Land.

18. It is my professional opinion and belief that none of the recorded written instruments referenced by or relied upon by the Plaintiff in Plaintiff's Complaint include or describe the Submerged Land.

I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this Affidavit and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

FURTHER AFFIANT SAYETH NAUGHT.



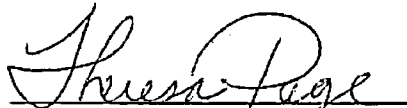
Craig L. Wallace

STATE OF FLORIDA)

) ss:

COUNTY OF PALM BEACH)

SWORN TO, ACKNOWLEDGED AND SUBSCRIBED before me by Craig L. Wallace, who is personally known to me, or has presented _____ as identification, on this 7th day of March, 2018.



Notary Public, State of Florida

My Commission Expires:

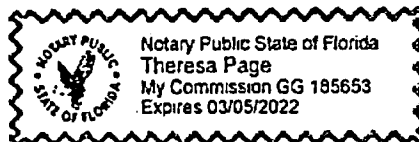


EXHIBIT “C”

NOT A CERTIFIED COPY

DEED 1168 REC 294

CE&FCD
FORM NO. 34

EASEMENT DEED

Between THIS INDENTURE, Made this the 14th day of November - A. D., 1955, by and
NORTH PALM BEACH, INC., a Florida Corporation,

of the first part, hereinafter referred to as the grantor, and CENTRAL AND SOUTHERN
FLORIDA FLOOD CONTROL DISTRICT, a body corporate, created by the Acts of the Legislature
of Florida, 1949, with its principal office in the Comau Building, West Palm Beach,
Palm Beach County, Florida, of the second part, hereinafter referred to as the grantee.

W I T N E S S E T H:

That for and in consideration of the sum of One Dollar and other good and valu-
able considerations, in hand paid by the grantee to the grantor, the receipt of which is
hereby acknowledged, the grantor does hereby grant, bargain, sell and convey unto the
grantee, CENTRAL AND SOUTHERN FLORIDA FLOOD CONTROL DISTRICT, its successors and assigns,
the perpetual easement and right for and to the exclusive use and enjoyment of the fol-
lowing described lands situate in the County of Palm Beach State of Florida:

A parcel of land in the Southeast one-quarter (SE $\frac{1}{4}$) of Section 17, Township 42 South, Range
43 East; said parcel of land being more specifically described as follows:

Beginning at the South one-quarter (SE $\frac{1}{4}$) corner of Section 17, Township 42 South,
Range 43 East, bear North 1° 31' 50" East, along the west line of the said South-
east one-quarter (SE $\frac{1}{4}$), a distance of 2375.62 feet; Thence, South 67° 25' 17"
East, a distance of 35.36 feet to an intersection thereof with the east right of
way line of Prosperity Farms Road and the point of beginning; Thence, continue
South 67° 25' 17" East, a distance of 16.07 feet; Thence, North 1° 31' 50" East,
parallel to the said East Right of Way line of Prosperity Farms Road, a distance
of 35.77 feet; Thence, North 80° 28' 10" West, a distance of 15.0 feet; Thence,
South 1° 31' 50" West, along the said East Right of Way line of Prosperity Farms
Road, a distance of 30.0 feet to the point of beginning.

The bearings in the above description refer to the standard plane rectangular coordinate
system for the East Zone of Florida.

for any and all purposes necessary, convenient, or incident to, or in connection with,
the construction, maintenance and operation of any project in the interest of flood
control, reclamation, conservation, water storage and allied purposes now or that may
hereafter be conducted by the grantee herein, its successors or assigns, in carrying
out the purposes and intents of the Statutes of the State of Florida relating to
CENTRAL AND SOUTHERN FLORIDA FLOOD CONTROL DISTRICT presently existing or that may be
enacted in the future pertaining thereto, and does further grant, bargain, sell and
convey unto the grantee herein, its successors and assigns, the full, complete, and
absolute title to all such materials as may be excavated, dredged or otherwise removed
from said lands in connection with any of the purposes above mentioned. Any part of
the whole of the easement and right herein granted may be assigned by the grantee for
use for any public purposes.

All the covenants and agreements herein contained shall extend to and be bind-
ing upon the parties hereto and their respective executors, administrators, personal
representatives, heirs, successors and assigns.



TO HAVE AND TO HOLD the same together with all and singular the appurtenances
thereunto belonging or in anywise incident or appertaining to the only proper use,
benefit and behoof of the grantee, its successors and assigns, forever.

1163 295

FORM NO. 940.

IN WITNESS WHEREOF, this easement deed has been executed by the grantor whose hand and seal is affixed hereto the date first above written.

NORTH PALM BEACH, INC.,
a Florida Corporation

BY: J. A. White (Seal)
Vice-President

ATTEST: Herbert A. Ross (Seal)
Secretary

Signed, Sealed and Delivered
in the presence of:

J. A. Linnier
Notary Public

STATE OF FLORIDA
COUNTY OF PALM BEACH }

I HEREBY CERTIFY, That on this day personally appeared before me
JAY H. WHITE and HERBERT A. ROSS
Vice-President and Secretary respectively, of
NORTH PALM BEACH, INC., a Florida Corporation,
to me known to be the persons described in and who executed the foregoing Easement Deed
and acknowledged before me that they executed the same for the purposes therein
expressed, and the said instrument is the act and deed of said corporation.

WITNESS my hand and official seal at West Palm Beach,
in the State and County aforesaid, this the 14th day of November A. D., 19 56.

J. A. Linnier
Notary Public

My commission expires: 9-5-59

My Commission Expires:

FILED FOR RECORD
STATE OF FLORIDA
COUNTY OF PALM BEACH
CLERK OF COURT

1956 NOV 21 AM 10 30

RECORDED IN BOOK
AND INDEXED
JAN 10 1957
J. ALLEN ARNETT, CLERK

J. A. Linnier
Notary Public

EXHIBIT “D1”

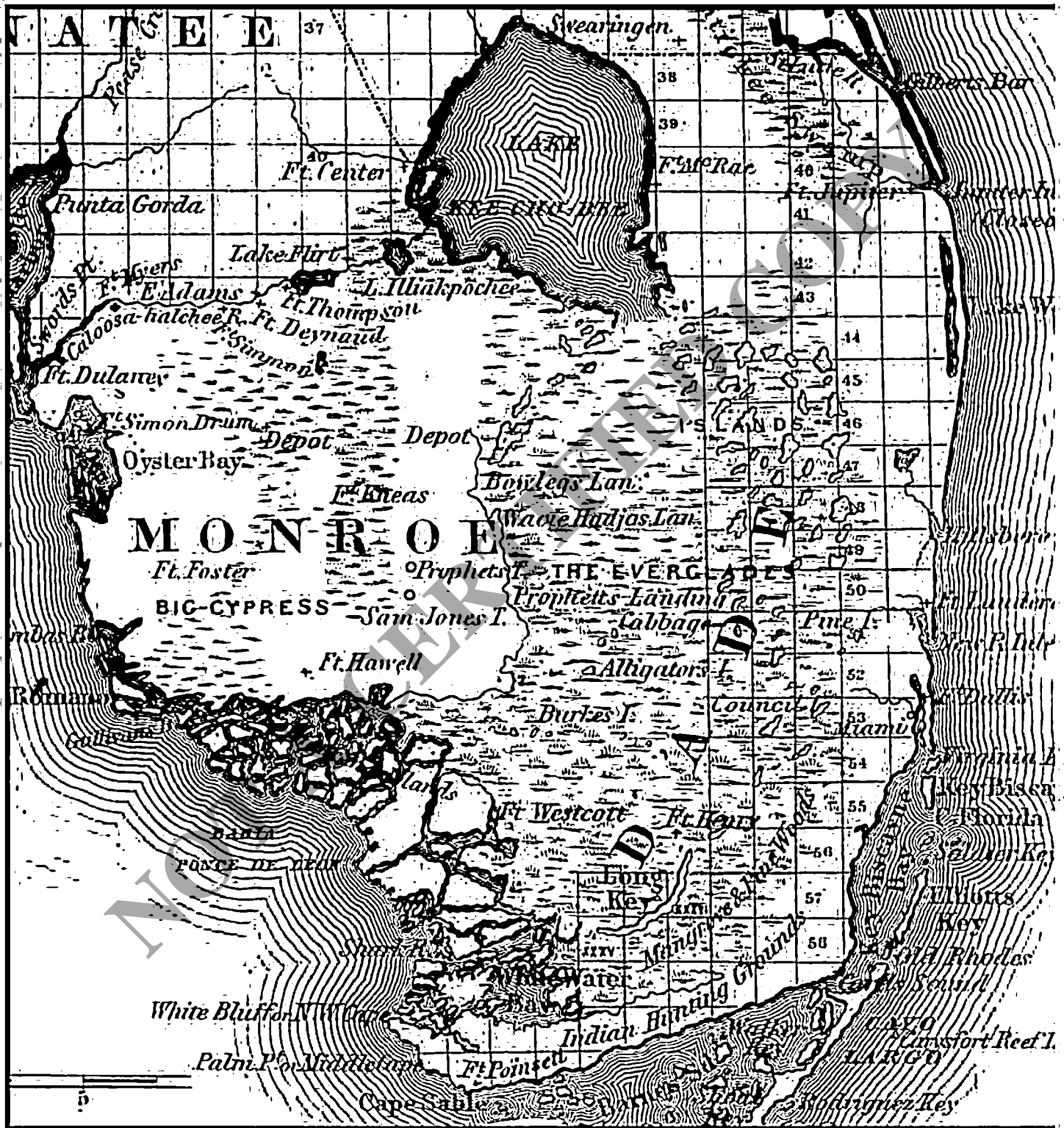
MAPS ETC

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[FL Maps](#) > [Region](#) > [1860-1879](#) > Gray's Atlas map of Florida, 1875

[Site Map](#)

Gray's Atlas map of Florida, 1875



Title: Gray's Atlas map of Florida
Projection: Unknown

Main Map Page
[Zoomify Version](#)

Source Bounding Coordinates:

W: E: N: S:

[B/W PDF Version](#)

[Color PDF Version](#)

Puzzles: [Easy](#), [Medium](#), [Hard](#)

[Google Earth](#)

[GIS Files](#)

Description: A portion of Gray's map of Florida detailing the southern tip of the peninsula and the Everglades region. County lines and the township/range survey grid are shown.

Note that much of the Everglades, the southern end of Lake Okeechobee, and the Monroe/Dade county line were unsurveyed at the printing of this map (1875). Forts, depots, and Native American lands are shown. Digitization provided by the USF Libraries Digitization Center. Rare Maps. This is a detailed map of Florida showing counties, cities, roads, railroads, inland waters, etc. Prime Meridians: Greenwich and Washington.

Measurements. Scale ca. 1:2,600,000

Place Names: 1860-1879, Atlantic Ocean, Miami, Fort Myers, West Palm Beach, Lake Okeechobee, Fort Lauderdale, Gulf of Mexico, Indian Hunting Grounds

ISO Topic Categories: inlandWaters, oceans, boundaries, transportation

Keywords: Gray's Atlas map of Florida, physical, historical, political, statistical, physical features, county borders, ethnological, inlandWaters, oceans, boundaries, transportation, Unknown, 1875

Source: Orlando Willis Gray, *Gray's Atlas* (Philadelphia, PA: O. W. Gray and Son, 1875) 107

Map Credit: Courtesy of the Special Collections Department, University of South Florida.

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[FL Maps](#) > [Region](#) > [1860-1879](#) > Gray's Atlas map of Florida, 1875

[Site Map](#)

[Maps ETC](#) is a part of the [Educational Technology Clearinghouse](#)

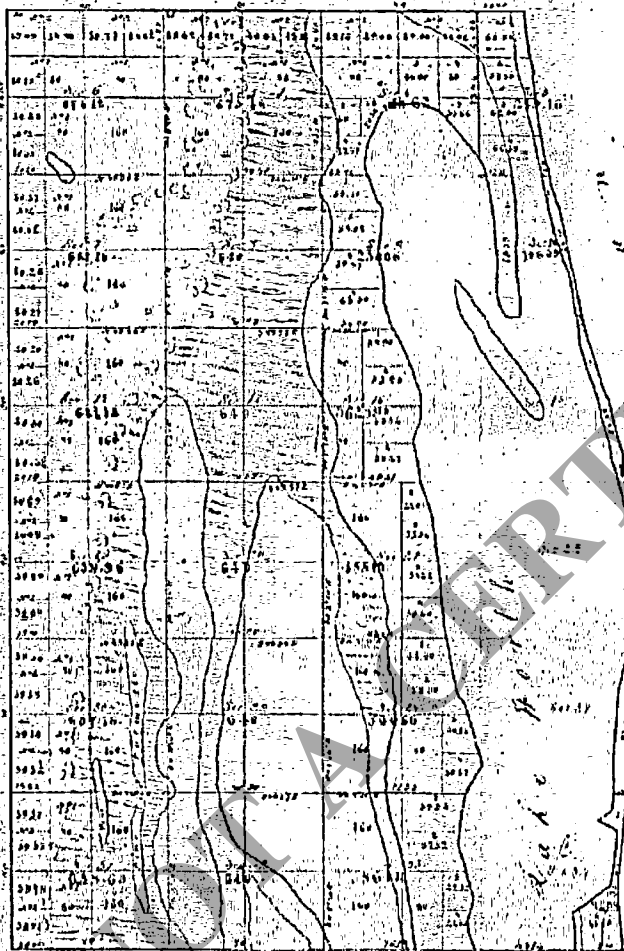
Produced by the [Florida Center for Instructional Technology](#) © 2007

[College of Education, University of South Florida](#)

EXHIBIT “D2”

FLORIN

State of Arizona

[illegible]

Estimated time of Loss 1,011.00
 + Salvage value 10,000.00

the name "Democratic" has been used, and it was, until we were informed by Mr. [illegible] in 1914, that it was not. I have been informed that it was not used until 1914.

The above Pipe is Numbered 1st - 22 South of Range 17th 23rd of the Township
Mentioned is strictly conformable to the field notes of the survey & correct as the
the other work has been examined and approved.

Myrica ripens (Willd.)
at
St. Augustine, Florida.
A. D. 1880. 1880.

1. The first part of the document is a list of names and dates, which appears to be a record of some kind. The names are written in a cursive script, and the dates are in a more formal, printed style. The list is organized into two columns, with names on the left and dates on the right.

[illegible][illegible]

ALL COPY

EXHIBIT “E”

NOT A CERTIFIED COPY

1953 Photo of Earman River – Palm Beaches Remembered



EXHIBIT “F1”

NOT A CERTIFIED COPY

Deed No. 707

Know all Men by these Presents, That the Board of Education of Florida, under an act of the Legislature of the State of Florida, entitled "An Act to Establish a Uniform System of Common Schools and a University," approved January 30, 1869, for and in consideration of the sum of One dollar & ten cents per acre, to them in hand paid by John A. Andrew & Stephen B. Bell of the county of Leon, State of Florida; have granted, bargained and sold, and do by these presents grant, bargain, sell and convey unto the said John A. Andrew & Stephen B. Bell and their heirs and assigns, forever, the following described **LANDS**, to-wit:

Lots numbered Three (3) and four (4) of Section Sixteen in Township Forty-two South, of Range Forty-two East,

containing One hundred & ten (110) ²⁵ acres, and lying and being in the county of Dade, in said State of Florida:

TO HAVE AND TO HOLD the said lands unto the said John A. Andrew & Stephen B. Bell and their heirs and assigns, forever.

In Testimony Whereof, The members of said Board have hereto subscribed their names and affixed their seals, and have caused the seal of "THE FLORIDA STATE LAND OFFICE" to be hereto affixed, at the Capitol, in the City of Tallahassee, on this, the Seventh day of July A. D. eighteen hundred and eighty-two

Seal

Charles W. Foster L. S.

Sup't of Pub. Instruction.

John L. Crawford L. S.

Secretary of State.

Geo. P. Raney L. S.

Attorney-General.

EXHIBIT “F2”


2000
Deed No. 2000


Know All Men by these Presents, That the Board of Education of Florida, under an act of the Legislature of the State of Florida, entitled "An Act to Establish a Uniform System of Common Schools and a University," approved January 30, 1869, for and in consideration of the sum of One dollar and twenty-five cents per acre, to them in hand paid by Mary H. Hatter of the county of Duval, State of Florida, have granted, bargained and sold, and do by these presents grant, bargain, sell and convey unto the said Mary H. Hatter and her heirs and assigns forever, the following described LANDS, to-wit:


The West half
of the South West quarter
of Section sixteen in
Township Forty-two North,
of Range Forty-two East,

containing Eight acres, and lying and being in the county of Dade, in said State of Florida:
TO HAVE AND TO HOLD the said lands unto the said Mary H. Hatter and her heirs and assigns forever.

In Testimony Whereof, The members of said Board have hereunto subscribed their names and affixed their seals, and have caused the seal of "THE FLORIDA STATE LAND OFFICE" to be hereunto affixed, at the Capitol, in the City of Tallahassee, on this, the fourteenth day of June A. D. eighteen hundred and eighty-six.

Albert J. Russell 
Supt of Pub. Instruction.

John Crawford 
Secretary of State.

B. M. Cooper 
Attorney-General.


J. H. Hatter
June 13/86